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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 350 (KBF)

5 AVTANDIL KHURTSIDZE,

6 Defendant.

7 -----x

8 New York, N.Y.

9 June 9, 2017

1:53 p.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM,
16 Acting United States Attorney for the
Southern District of New York

17 ANDREW ADAMS
18 ANDREW MARK THOMAS
Assistant United States Attorneys

19 GUY OKSENHENDLER
20 Attorney for Defendant

21 ALSO PRESENT:

22 YANA AGOUREEV, Russian Interpreter
23 MAYA BERIDZE, Georgian Interpreter
LASHA GEGECHKORI, Georgian Interpreter
24 NASHAUN RICHARDS, FBI
ROBERT HANRATTY, FBI
ERIN OTTERSON, FBI
25 BRUCE TURPIN, FBI
ASHLEY COSME, Pretrial

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1 (Case called)

2 THE COURT: We need to have the defendant get the
3 earpiece on.

4 THE INTERPRETER: He has it in his hands.

5 THE COURT: He needs to put it on his head.

6 Can you hear?

7 THE DEFENDANT: Yes. Yes, I can hear.

8 THE COURT: Can you hear now?

9 THE DEFENDANT: As far as statements?

10 THE INTERPRETER: I'll get --

11 THE COURT: Yes, this happens from time to time.

12 Mr. Khurtsidze, can you hear now?

13 THE DEFENDANT: Yes.

14 THE COURT: Terrific. This is why I always make that
15 announcement to people at the very beginning of the proceeding,
16 because sometimes the equipment malfunctions, and the battery
17 runs out, things like that.

18 We are here, as I understand it, on an application by
19 the government relating to the terms of bail that the
20 magistrate set yesterday -- I believe it was yesterday -- for
21 Mr. Khurtsidze. Is that correct?

22 MR. ADAMS: That's correct, your Honor.

23 THE COURT: All right.

24 Let me tell you what I have received in connection
25 with this application. I have only received a copy of the

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1 pretrial services report. I have not received a written
2 application, which is fine, because we can do it orally, but I
3 want to make sure that you folks don't think you've given me
4 anything other than this report.

5 MR. ADAMS: No, your Honor.

6 THE COURT: Okay.

7 So, it's the government's application, as I understand
8 it, Magistrate Judge -- was it Gorenstein?

9 MR. ADAMS: Yes.

10 THE COURT: -- has agreed to certain bail conditions.
11 So, why don't you --

12 Joe, can you actually print it for me, that one? Just
13 let me get the Manhattan's bail sheet.

14 So, go ahead and tell me the application. If you can
15 tell me, also, how things occurred yesterday, that would be
16 helpful, too, whether it was denied or whether the government's
17 has changed its position.

18 MR. ADAMS: No, your Honor. Thank you.

19 So, yes, it's our application that Mr. Khurtsidze be
20 detained pending trial, both on dangerousness grounds and on
21 the ground that he presents a substantial risk of flight. We
22 made that application yesterday. It was opposed by
23 Mr. Oksenhendler. And Judge Gorenstein set bail conditions,
24 which included -- I think it's being printed now, but it was a
25 \$200,000 bond secured, I think, only by \$30,000 in cash or

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1 property, four cosigners, and strict pretrial services with
2 home detention, although Judge Gorenstein modified that home
3 detention to some extent by allowing Mr. Khurtsidze to leave
4 home for purposes of training, and work, and then sort of
5 unspecified other reasons upon notice to pretrial, I believe,
6 but those weren't really named.

7 There were two presentations, both based on attorney
8 proffers yesterday, and the government ran through a proffer of
9 evidence, which I would like to do again today. I can
10 supplement that to some extent based on some further
11 information, after talking with the agents, and
12 Mr. Oksenhendler also made a presentation prior to Judge
13 Gorenstein entering that order.

14 THE COURT: Before you do that, can you tell me, just
15 so I have it in my mind, if there were particular things that
16 Judge Gorenstein said, apart from setting the terms, in
17 connection with the bail application that would assist me in
18 understanding why -- given the presentation that I am about to
19 hear and have expanded upon, why he determined it was
20 appropriate to set bail?

21 MR. ADAMS: Sure.

22 THE COURT: Now, I will also say, I'd love to have a
23 transcript, but as you folks know, in Magistrate's Court,
24 they're done by audio recording, it takes some time to get that
25 reduced to writing. I have requested it, but it has to be sent

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1 out, and so I don't yet have it.

2 So, why don't I just get a sense as to what you folks
3 think was the basis for his rationale, and then we'll take it
4 from there.

5 MR. ADAMS: So, Judge Gorenstein said explicitly that
6 he did not believe the government had carried its burden with
7 respect to showing a danger to the community, but did not
8 elaborate on that.

9 That being said, I think it's obvious he set the
10 conditions based on some view of risk of flight. I don't
11 recall that he elaborated on that either.

12 THE COURT: So, he thought that the -- obviously, he
13 thought the conditions for risk of flight could be met, but he
14 did not find that there was a risk of danger. So, presumably,
15 he thought that there was a risk of flight, but that there were
16 certain conditions which could satisfy the standard?

17 MR. ADAMS: I think that's right.

18 THE COURT: Okay.

19 MR. OKSENHENDLER: I would disagree with that to the
20 extent that he did not explicitly say that he was a risk of
21 flight. He just imposed conditions to ensure that he would not
22 be able to, by turning over his passport and the strict
23 monitoring, but Magistrate Judge Gorenstein did say that the
24 government did not meet its burden with regard to danger to the
25 community.

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1 THE COURT: Okay. Let me just ask both of you, before
2 we begin, so that we can understand whether there is a
3 disagreement on the legal principles that apply. This is
4 governed by 18, U.S.C., 3142. It's not a presumption case.
5 There are two standards, there are two bases for an application
6 for detention, which are separate. They are separated by an
7 "or." One is danger to the community, the other is risk of
8 flight.

9 The government has to first establish danger to the
10 community or risk of flight. They do that by a preponderance
11 of the evidence, and then they have to establish whether there
12 are any conditions which could otherwise satisfy that.

13 MR. OKSENHENDLER: I would agree with that.

14 THE COURT: So, Mr. Oksenhendler is agreeing with
15 that.

16 MR. OKSENHENDLER: And, of course, under 3142(g),
17 there are the factors we have to consider.

18 THE COURT: Right. I'm looking at the Sabhnani case,
19 493 F.3d 63 (2d Cir. 2007). If the government wants to carry
20 the first portion of the burden by clear and convincing, if it
21 wants to try to do that, just tell me what you're going to try
22 to do and --

23 MR. ADAMS: We'll satisfy it, even clear and
24 convincing.

25 THE COURT: Okay. Let's figure out if you need to go

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1 that far.

2 MR. ADAMS: That's right.

3 THE COURT: Let me also say, while you're looking for
4 that, while Mr. Thomas is looking for that, as I understand,
5 one of the issues is that the defendant, I understand, is a
6 professional sportsman, that's his career, and --

7 MR. OKSENHENDLER: Yes, Judge.

8 THE COURT: -- he has some significant event for which
9 he's training at the moment that is upcoming in July.

10 MR. OKSENHENDLER: Your Honor, there was supposed to
11 be a world championship middleweight title fight that my client
12 is --

13 THE COURT: He's a boxer?

14 MR. OKSENHENDLER: Yes. It was supposed to take place
15 in London on July 8th. Due to the arrest, that bout has been
16 put on hold. It's been all over the newspapers around the
17 world.

18 THE COURT: I see. So, that's already been put on
19 hold?

20 MR. OKSENHENDLER: By the powers that be with regard
21 to the boxing world.

22 THE COURT: All right. So, the detention, or lack of
23 detention, that's not going to, at this point in time, impact
24 that. That sounds like the boxing authorities have already
25 taken that off calendar because of the arrest?

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1 MR. OKSENHENDLER: Because of the arrest, and they
2 didn't know what was going to happen, from what I understand.

3 THE COURT: Do you have any reason to believe that the
4 boxing world would put it back on if he was released, or do you
5 just hope they would, but have no idea?

6 MR. OKSENHENDLER: I am not sure, your Honor. We were
7 in court yesterday until about 7:00 o'clock, at which time we
8 found that we had to appear today. I didn't even get notice
9 from the government that they intended to appeal the bail, so
10 to speak, to you today, and I did not have a chance to speak to
11 his management team with regard to how they would like to
12 proceed, but, obviously, nothing can happen if he's detained,
13 but there is every reason why he should receive bail in this
14 case.

15 THE COURT: All right.

16 So, let's go ahead and let's turn -- do you have the
17 standard?

18 MR. ADAMS: For the dangerousness prong, it's clear
19 and convincing for risk of flight, it's preponderance.

20 THE COURT: So danger prong, clear and convincing.
21 Risk of flight, preponderance. And then the standards and all
22 events are preponderance?

23 MR. ADAMS: Correct.

24 THE COURT: Okay. Go ahead.

25 MR. ADAMS: So, your Honor, we're moving under both

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1 prongs, both dangerousnesses and risk of flight, as we did
2 yesterday. I've spoken a little bit today about the nature of
3 the evidence, but with leave from the Court, I'll speak a
4 little more with respect to this defendant in particular.

5 THE COURT: Yes, that's what I'm most interested in
6 for this application.

7 MR. ADAMS: So, the evidence that I'm going to be
8 talking about is on video. It is corroborated not only by the
9 fact that it's on video, but there are, in two of the instances
10 that I'm going to be talking about, a confidential source who
11 can talk about this, these incidents, recordings, audio
12 recordings with respect to one incident that I'm going to be
13 talking about, wiretap evidence that corroborates one of these
14 events, all of which is to say that the evidence of this
15 defendant's dangerousness and the violence he has inflicted on
16 behalf of this enterprise is overwhelming.

17 That goes not only to establishing beyond clear and
18 convincing evidence that he does pose a danger, but it also
19 informs on risk of flight because this is a case that if it
20 goes to trial, will result in a conviction and significant
21 penalties. The events that I'm talking about revolve around
22 the poker house and the extortion scheme that I was discussing
23 earlier.

24 The poker house is geared with a surveillance system,
25 as we discussed. We had video access to the surveillance

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1 system, at least as of a certain period of time, and three of
2 the events I'm going to describe occurred in the poker house.

3 Event number one has to do with an assault on a
4 lower-level member of the Shulaya enterprise. It's actually
5 somebody who's charged in the case itself, Mr. Chaganava, who
6 is a defendant in the case. He was, early on in the
7 investigation, somebody who was identified as a Shulaya
8 underling. He was somebody who helped arrange for the sales of
9 stolen goods and fencing of stolen goods. He had a key role in
10 the cigarette scheme at one point. It's our understanding that
11 something went wrong with respect to Mr. Chaganava paying
12 tribute or paying with respect to Shulaya. As a result,
13 Mr. Chaganava was beaten badly.

14 THE COURT: This is on videotape?

15 MR. ADAMS: This one is not. The other two will be.

16 THE COURT: I'm sorry, tell me what year this was?

17 MR. ADAMS: The beating was in 2016.

18 THE COURT: All right. Okay. So, tell me about the
19 other two.

20 MR. ADAMS: The other two -- well, just to wrap up on
21 that one, the confidential source is not actually there present
22 while the beating is happening, but Mr. Khurtsidze, who we'll
23 talk about more, is there, Shulaya is there, and other members
24 of sort of the muscle side of the enterprise are in the poker
25 house. The confidential source is actually sent to go get ice

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1 for Mr. Chaganava, who is badly beaten during this encounter.
2 And given the other circumstances that I'm going to be talking
3 about, I think it is a safe surmise here that Mr. Khurtsidze
4 was if not the person beating him, at least somebody there to
5 ensure that he didn't move while it happened.

6 The other two incidents in the poker house are on
7 video. We don't have full visibility into the reasons why this
8 happened, but Mr. Khurtsidze assaults and punches someone who
9 is associated with Mr. Vinokurov, who is another Shulaya
10 enterprise member. He was here earlier today. The victim
11 there is not a defendant in this case, and because we don't
12 have audio, we don't know exactly what transpired with
13 Mr. Khurtsidze, who is a professional fighter and not someone
14 from whom a punch is a small thing, punched this person in the
15 poker house.

16 Which leads me to the third incident, which we have
17 not only on video, but also on audio. The audio was obtained
18 from the confidential source, who was the victim of this
19 assault. The background is one of the larger poker games that
20 the Shulaya enterprise put together. There was a lot of money
21 involved. For almost 24 hours, the game ran. The confidential
22 source was there acting sort of as a manager and a worker for
23 the poker house during the game, and he was accused at the end
24 of all of this of having pocketed some money that belonged to
25 the enterprise as a result of the break from what the house had

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1 earned from the poker game.

2 He was summoned to the poker house in circumstances
3 that looked just like Mr. Chaganava. It looked just like this
4 second assault that I just mentioned. He sat down at the
5 table, he was berated for a little while for having or being
6 accused of having stolen goods or stolen money from the game,
7 and then two things happened, both of which are crystal clear
8 on tape.

9 The first is that Mr. Khurtsidze, at the apparent
10 direction of Shulaya, who's doing most of the talking and
11 berating, stands up and punches the CS in the face with extreme
12 force. Shulaya then seconds that by basically slapping the CS
13 around for a little while and threatening him that he had
14 better pay up or there will be further punishment to come. The
15 CS, fortunately, made it out of the poker house on that day,
16 had the recording, provided the audio recording of the same
17 event that goes with the video.

18 THE COURT: What year was that?

19 MR. ADAMS: That was last year as well.

20 THE COURT: And the second one, which is the on-video,
21 but no audio, that was also 2 -- these are, all three, in 2016?

22 MR. ADAMS: Correct, your Honor.

23 THE COURT: All right. And did Judge Gorenstein know
24 about all three of these yesterday?

25 MR. ADAMS: The second one, the assault on --

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1 actually, the first two that I mentioned, from speaking with
2 the agents and the source who learned that Mr. Khurtsidze was
3 there for when Chaganava was being beaten, although we don't
4 know by whom because the source wasn't looking at that or
5 wasn't in the room when it happened, and the second one, the
6 assault of Mr. Vinokurov, was something that I wasn't aware of
7 until today.

8 THE COURT: Okay.

9 MR. ADAMS: The third incident, the agents brought to
10 my attention last night after the arguments. Judge Gorenstein
11 was not aware of this final thing, although he was generally
12 made aware that Mr. Khurtsidze was sent out to help extort and
13 intimidate debtors. We did make that very clear yesterday.

14 THE COURT: That, in the government's view was the --
15 you have evidence to support that that was the role?

16 MR. ADAMS: That one of his roles --

17 THE COURT: For sure, Mr. Oksenhendler, I'm going to
18 give you a full chance to rebut everything.

19 MR. OKSENHENDLER: Sure. Thank you, Judge.

20 THE COURT: All right.

21 MR. ADAMS: That he was a part of crews that went to
22 speak to debtors. What I didn't appreciate was that one of
23 those instances is actually recorded because the confidential
24 source was there, and a threat was made by Mr. Khurtsidze, in
25 his words, to threaten the debtor. That was also --

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1 THE COURT: Threaten the debtor with violence or with
2 other action?

3 MR. ADAMS: So, this is not made explicit. There's
4 nothing on the recording that says I'm going to come and beat
5 you, or kill you, or anything like that. You're going to have
6 problems is about the extent.

7 THE COURT: You better pay up or you're going to have
8 problems.

9 MR. ADAMS: But in the context of what I've just
10 discussed, that's crystal clear what that means.

11 THE COURT: What year was that?

12 MR. ADAMS: Last year as well, your Honor.

13 THE COURT: All right.

14 MR. ADAMS: Those are four instances of violence or
15 threatened violence on behalf of the Shulaya enterprise.

16 THE COURT: When you said that he was part of the crew
17 that would go out and -- and I'm going to characterize what you
18 said -- acted as an enforcer of debts, do you have anything
19 more than this one instance? Is there other evidence, even if
20 it's not particular evidence, of where you've got an audiotape
21 or something like that of a threat, or is that the evidence for
22 the enforcer role?

23 MR. ADAMS: No, there are other incidents where he
24 goes out, two other incidents where he goes out, to talk to
25 other debtors. And there's also a conversation, I should

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1 mention, between the source and Mr. Dzhnashvili, who was one
2 of the key lieutenants of the Shulaya enterprise and was
3 present for the beating of the confidential source I mentioned
4 earlier, during which in a conversation about somebody who owed
5 money to the poker side of the Shulaya enterprise, Dzhnashvili
6 essentially says, you know, take the kickboxer with you, and we
7 understood that to be a reference to this defendant.

8 THE COURT: All right.

9 MR. ADAMS: This is a group, generally, that is feared
10 by not only the community that has to deal with them, but by
11 people within the enterprise itself. Mr. Toradze, who was here
12 earlier and was also a member of the contraband cigarette
13 scheme, is on a phone call with Shulaya at one point where
14 Shulaya is making reference to the beating of Chaganava in an
15 effort to threaten Mr. Toradze, who apparently had some sort of
16 falling-out with Shulaya as well or seemed to have upset
17 Shulaya at one point.

18 So, it's exactly this kind of violence that made the
19 Shulaya enterprise effective at keeping its people in check.
20 It's what allowed them to use the poker house, which was
21 essentially a room above a restaurant, and allowed them to move
22 into that at will. There are other allegations in the
23 indictment of essentially extortion or the exploitation of
24 different businesses and businesspeople. This is not possible
25 unless people are quiet about what the Shulaya enterprise does,

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1 and people are not quiet unless there's a credible threat of
2 violence. This defendant provides the credible threat of
3 violence.

4 THE COURT: All right. So, why don't we turn, then,
5 to risk of flight. Why don't you tick through the issues, and
6 I'll ask you to sort of tick through them a little more
7 quickly.

8 MR. ADAMS: Sure.

9 The pretrial services report makes a lot of the points
10 that I would like to make about flight. No fixed address after
11 he moved out of Brooklyn. He's offered essentially to stay in
12 a hotel if he were to leave. He apparently has no real ties to
13 the community other than, I would suggest, the ties that form
14 the basis of this indictment. He was in Georgia as recently as
15 Wednesday.

16 THE COURT: Georgia, the country, not the state of the
17 United States?

18 MR. ADAMS: That's correct, your Honor.

19 THE COURT: So the record's clear.

20 MR. ADAMS: Thank you.

21 THE COURT: All right.

22 MR. ADAMS: He boarded a flight -- and this is
23 actually, I think, important, and it's a point that I didn't
24 make in front of --

25 THE COURT: That's okay. I just wanted to make sure

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1 that she is able to catch up with you.

2 THE INTERPRETER: Sorry.

3 THE COURT: Don't worry about it. It's not a problem.

4 So, let's go back to he was in Georgia as recently as?

5 MR. ADAMS: Wednesday. He boarded a flight hours
6 before the key parts of the arrest in this case started
7 unfolding. There were two people arrested the evening before
8 he got on the flight. That was Mr. Marat-Uulu and the person
9 who's charged in the complaint with Mr. Marat-Uulu, who's
10 Nikoloz Jikia. There is no known connection between those two
11 defendants and this defendant other than their activities
12 generally with the enterprise, which is just to say, their
13 arrest is not something that he would likely have been aware
14 of. But I say this to make the point that it's not as if he
15 came back to the United States knowing he was going to be
16 arrested. This was a surprise when he landed.

17 The other point here is that he has deep ties to
18 Georgia, he has deep ties to the Ukraine, children there,
19 family there, none here. He has been there as recently as this
20 week. He has substantial assets in that country. He has
21 liquid assets only here, meaning he has a bank account, which
22 he could access if he went to Europe, a Bank of America
23 account, I think, is what he said or represented to Judge
24 Gorenstein, in which he has \$60,000 available. But the main
25 asset that he lists in the pretrial report is a \$200,000 asset

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1 in Georgia.

2 In addition, he is not somebody whose livelihood
3 depends on being in the United States. He's a prize fighter.
4 The fight that Mr. Oksenhendler referred to earlier is not in
5 the United States, it was in London, or supposed to be in
6 London. He does not need to be clear in the United States,
7 certainly not in this district, in order to make plenty of
8 money and live very comfortably in the country where he already
9 has a \$200,000 asset.

10 He is a member of an enterprise -- although he himself
11 is not someone from whom false identifications were seized or
12 someone who we are accusing at this point of having gone out on
13 the false credit card scam, he is a member and associate of an
14 enterprise where that sort of material is readily available on
15 the cheap and at a moment's notice, frankly, given what we know
16 from the wiretap intercepts from some of his codefendants.

17 THE COURT: Let me ask you where this fell within the
18 array of presentments and bail applications that Judge
19 Gorenstein listened to yesterday. Were you arguing this in the
20 beginning, the middle, or the end of what must have been a very
21 long day?

22 MR. ADAMS: This was actually the second day, and this
23 was the very last thing that happened in front of Judge
24 Gorenstein.

25 THE COURT: So, it was the last thing?

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1 MR. ADAMS: The very last thing. Before this --

2 THE COURT: What time was it?

3 MR. ADAMS: He was presented at approximately
4 5:00 o'clock yesterday.

5 THE COURT: All right.

6 MR. ADAMS: And this was not in a string of lots of
7 people. Wednesday was the main presentment.

8 THE COURT: So, this was on its own?

9 MR. ADAMS: Yes. And on Wednesday, there were
10 essentially no -- there was one bail argument on a minor point
11 with respect to Mr. Buziashvili, not with respect to detention
12 but a fight about the conditions of release.

13 THE COURT: I understand your position. Let me just
14 turn to Mr. Oksenhendler and hear from him.

15 MR. OKSENHENDLER: Yes, your Honor. I first would
16 like to point out that there is one mistake in the report that
17 was handed to you. On page 2, in the last paragraph, it said
18 this year my client made approximately \$200,000. What was
19 represented in court yesterday was that were he to win the
20 July 8th fight, his payment would be \$200,000.

21 THE COURT: I see. Okay.

22 MR. OKSENHENDLER: He has not made \$200,000 this year.

23 THE COURT: How much has he made this year?

24 MR. OKSENHENDLER: I think he said he had made -- I
25 think it was approximately \$50,000 this year --

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1 THE COURT: Okay.

2 MR. OKSENHENDLER: -- part of which goes to his
3 management team, his trainers, to pay for his expenses.

4 THE COURT: Are you retained?

5 MR. OKSENHENDLER: No, your Honor. I'm appointed.

6 THE COURT: You're CJA?

7 MR. OKSENHENDLER: Yes, your Honor.

8 The assets that he has --

9 THE COURT: Let me just ask one question. We'll get
10 to the bottom of the \$200,000. That number came from your
11 client to pretrial?

12 MR. OKSENHENDLER: I think it was part of my
13 presentation to the Court when the judge asked how much would
14 he make from the fight that's upcoming.

15 THE COURT: It's not that your client told pretrial
16 that he had made \$200,000 this year?

17 MR. OKSENHENDLER: That's correct.

18 MS. COSME: Your Honor, I interviewed the defendant,
19 and from my understanding, that's what he said, that to date
20 for this year, 2017, he had made \$200,000.

21 THE COURT: And you interviewed the defendant?

22 MS. COSME: Yes.

23 THE COURT: In any event --

24 MR. OKSENHENDLER: I read the report. I don't think
25 that was -- that's what it said, but --

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1 THE COURT: I understand.

2 MR. OKSENHENDLER: -- my representation to the Court
3 was that --

4 THE COURT: He might be able to make another \$200,000.
5 I mean, it's a world championship.

6 MR. OKSENHENDLER: That's right. But he only had one
7 other fight this year, and it was not a title type fight.

8 THE COURT: Okay.

9 MR. OKSENHENDLER: With regard to your inquiry about
10 when -- we had the presentment yesterday. Judge Gorenstein was
11 not tired, it wasn't at the end of the day, he wasn't
12 exhausted. He was very -- he was keen to ask the right
13 questions in coming to a very reasoned decision that bail
14 should be set in this case.

15 THE COURT: So, tell me how he got over the assaults.

16 MR. OKSENHENDLER: Well, with regard to the first
17 one --

18 THE COURT: Let's just take them --

19 MR. OKSENHENDLER: -- on the codefendant, the
20 government isn't even sure that my client was present or a
21 participant in that assault.

22 THE COURT: Is the evidence on that weak, that he was
23 present?

24 MR. ADAMS: The evidence that he was present is not
25 weak. The evidence that any particular person actually struck,

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1 we have no evidence --

2 THE COURT: You know he was present, and that's it?

3 MR. ADAMS: Sure.

4 THE COURT: For sure.

5 MR. OKSENHENDLER: But present in a large facility
6 where something is going on or he was present in the room
7 where --

8 THE COURT: Let me find out.

9 Is the government going to make a proffer he was
10 present in the room or in the poker establishment?

11 MR. ADAMS: The room. There's very little difference
12 between those two things, it's not a big establishment, but the
13 room --

14 THE COURT: Is this room huge? Could it have been
15 from here across the room full of people, or was it the kind of
16 thing where if you're in the room, you're seeing what's going
17 on in the room?

18 MR. ADAMS: Based on my experience of other judges'
19 robing rooms, it's approximately the size of a robing room.

20 THE COURT: All right.

21 MR. OKSENHENDLER: I still don't understand how merely
22 being present --

23 THE COURT: No, but the factual proffer is only that
24 he was present during an assault at least. He was at least
25 present during an assault. So, let's go to the second.

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1 MR. OKSENHENDLER: The second where the government
2 admitted here is that he doesn't know exactly what transpired.
3 So, although there's a video with some kind of scuffle,
4 although I have not seen the video, who knows what caused that
5 incident, that alleged incident, to occur.

6 THE COURT: So, let me just ask: Does it look like
7 self-defense? Did the other individual throw a punch? Move
8 upon the defendant? Get in his face?

9 MR. OKSENHENDLER: Did he bait my client?

10 THE COURT: I won't know the oral part of it, so --
11 one way or the other, but at least I'll know visually whether
12 or not there's an altercation. Was he in his face moving up on
13 him, you know, closing in?

14 MR. ADAMS: Just one moment, your Honor. I want to
15 speak correctly.

16 THE COURT: Yes.

17 (Pause)

18 THE COURT: Just for the record, just so it's clear,
19 the counsel is talking to one of the agents involved. I take
20 it that the agent has actually seen the videotape with his own
21 eyes.

22 MR. RICHARDS: Yes.

23 THE COURT: So, you've got a report from an agent
24 who's here. So, tell me what --

25 MR. OKSENHENDLER: Can I get the agent's name?

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1 THE COURT: Yes.

2 MR. RICHARDS: Nashaun Richards.

3 MR. OKSENHENDLER: Thank you, Judge.

4 MR. ADAMS: Thank you, Judge. I was clarifying which
5 of the two video assaults I was recalling the fact from.

6 With respect to the one that Mr. Oksenhendler is
7 referring to right now, where the CS is not the victim, it's
8 clear that it's not self-defense. The guy doesn't throw a
9 punch first. And in light of that, and in light of some other
10 facts with respect to the assault on the CS, I think it's
11 easily understood that it is an assault, again, on a
12 lower-level member of the enterprise to enforce the
13 enterprise's power.

14 With respect to the third assault on the CS, the CS
15 has made a stand at attention while he gets punched by this
16 defendant and by Shulaya.

17 MR. OKSENHENDLER: It sounds, based on what was
18 represented by the government, that they're guessing as to what
19 happened with the second assault, that they don't know what
20 actually happened or what was the precursor to some type of
21 incident or alleged incident. There is no video.

22 MR. ADAMS: There is.

23 THE COURT: There's a video of both, no audio.

24 MR. OKSENHENDLER: No audio, I meant to say, Judge.

25 Unfortunately, my client is a world-class fighter. It

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1 struck me last night, after hearing the government's arguments
2 made to the Court, I remember an incident where Mike Tyson was
3 out one night when he was the world champion, he was out
4 Uptown, and another boxer named Mitch Green baited him into
5 having some kind of fight on the street. Unfortunately, when
6 you are a successful athlete, sometimes people want to be
7 around you, sometimes people have too much to drink and mouth
8 off. We don't know the circumstances without any audio
9 understanding of what was said and what transpired beforehand
10 to have any context as to what is seen on the videotape.

11 With regard to the third incident, although I haven't
12 seen the videotape or heard the audio, again, I don't know the
13 circumstances, although the government was willing to somewhat
14 mislead the Court yesterday with another piece of evidence
15 which they didn't raise today. In court yesterday, the
16 government proffered that my client was a critical participant
17 in the wire fraud because he was the one who allegedly moved
18 some electronic equipment from one place to another. It wasn't
19 that he was there as protection, or muscle, or was armed, or
20 anything, and that this electronic equipment was so critical to
21 anything, but the fact that he moved it, he was the only one
22 who could physically move it. And that's clearly a
23 misleading --

24 THE COURT: Well, they haven't done that. They've
25 haven't repeated it today.

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1 MR. OKSENHENDLER: I understand, but they were willing
2 to try and enflame the decision-maker here as to what his
3 participation is, and I think they overstated their case
4 against him yesterday. And the whole point, also, was, they
5 didn't bring that up again today because it was a losing
6 argument.

7 I don't know the circumstances about the third
8 assault, but assuming for the moment --

9 THE COURT: How about the audiotape, the audiotape
10 where he threatens somebody, the fourth incident, and that sort
11 of feeds into the government's argument that he will be shown
12 through the evidence to be among the muscle or the enforcement
13 of the crew?

14 MR. OKSENHENDLER: Well, the government described it
15 as my client making an alleged statement that you'll have
16 problems. You know, without understanding the inflexion of the
17 speaker, the circumstances in which that statement is made, it
18 could very well be advice to someone like, hey, man, you should
19 really pay that guy back because otherwise you're going to have
20 some problems. There are very different ways to interpret
21 those words based on the circumstances. I haven't had a chance
22 to listen to that audio recording. Again, I'm here not even 24
23 hours on the case, and I understand the government is doing
24 good work, and they're representing their client well, but I
25 have to do the same. And I don't have the benefit of listening

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1 to this evidence.

2 But to reach a clear and convincing standard, they
3 have not yet met that burden, in my opinion.

4 THE COURT: How about on the risk of flight? Even if
5 you were to argue no danger to the community, and you had
6 somebody where they were a pacifist, right, would you agree
7 with me that, as a matter of law, if there was a sufficient
8 risk of flight, that would be, in and of itself, enough?

9 MR. OKSENHENDLER: Of course, your Honor. However,
10 based on this matter, there are conditions that can be met
11 which would alleviate any concerns the Court would have.
12 Number one, in my argument to the Court yesterday, I made no
13 argument availing myself to the fact that my client wanted to
14 fly to London to fight in the scheduled fight. My client has a
15 contract with a New York boxing promoter. His contract is here
16 in the United States. That's why he's here.

17 THE COURT: So, the bout, though, is a London bout?

18 MR. OKSENHENDLER: Yes, but, obviously, that's off for
19 now. And we haven't even talked about -- we hadn't even
20 thought about asking him if he would leave the country. Right
21 now, all we want to do is get him home.

22 THE COURT: But I don't even have a home. Is it the
23 case he doesn't have an apartment, he can go live in a hotel?

24 MR. OKSENHENDLER: When asked -- my client has never
25 been arrested before. He's never been charged with a crime.

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1 He's not a kid, he's a 37-year-old man. So, this isn't a case
2 where he's arrested, it's the first time, but he's a young man,
3 so he would have plenty of more chances to get arrested again.
4 This is a man who's lived 37 years and has never gotten into
5 any trouble with law enforcement. He does not have an address.
6 He did previously have an address in Brooklyn. And Magistrate
7 Gorenstein said if he does meet the conditions, he's going to
8 have to explain to pretrial and before he's released, he would
9 have to have an address.

10 We have -- they left. There were about four or five
11 friends that were here last night, who I met with. There were
12 other people here earlier. I don't know if they understood
13 that it was going to be us arguing this over, but we're going
14 to meet at the beginning of the week to find out about
15 suretors, and they said they would find a permanent place for
16 him to stay should he be released.

17 So, one of the conditions for his release was that he
18 would.

19 MR. DONALDSON: Excuse me, Judge. If I may interrupt.

20 THE COURT: Mr. Donaldson?

21 MR. DONALDSON: I think the people he's speaking about
22 are standing right outside the door. They asked me --

23 THE COURT: I don't need them to testify, but thank
24 you for that information. They haven't left, they're there --

25 MR. DONALDSON: No. They're outside the door.

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1 MR. OKSENHENDLER: Thank you.

2 So, he would have an address, and as far as we're
3 concerned, if that's a condition the Court needs met, so be it,
4 we will have an apartment that he can live in where he can be
5 monitored.

6 THE COURT: It certainly is unusual to release
7 somebody with a serious risk of flight concern who doesn't have
8 an address, but let me ask you about the attachment to this
9 country.

10 It's significant that, as I understand it, he has a
11 small child in Georgia, overseas, and his parents and his
12 siblings are all -- in fact, his whole family, everybody, it
13 might be fair to say, is overseas, and he owns real estate and
14 has a bank account, all also overseas. Are those things
15 correct?

16 MR. OKSENHENDLER: That is correct. However, that
17 should not preclude him from being released on bail in this
18 case. He can have an apartment here with friends where he can
19 live. Despite the fact that he has ties to the Nation of
20 Georgia, he also has a professional obligation where he is
21 under contract here in the United States and in New York City.
22 So, his ability to fight is based on him satisfying his
23 obligations to his contract here in the United States.

24 THE COURT: All right, I hear what you're saying.
25 You're saying that his desire to satisfy his contract here in

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1 the United States is a very significant motivation for him.

2 MR. OKSENHENDLER: That's his only way to make money.
3 That's how he makes money. If he goes to Georgia, he can't
4 fight. He can't leave and fight because he would be violating
5 his contract. No one would take the fight with him because
6 they would be sued by his management company.

7 THE COURT: Do we know that he actually has -- whether
8 there's any life left in the contract? In other words --

9 MR. OKSENHENDLER: One year on his three-year
10 contract.

11 THE COURT: No. What I mean is that they have already
12 canceled the bout for London, so if they canceled the bout for
13 London, the contract may or may not have any umph left in it.

14 MR. OKSENHENDLER: I think it was postponed. I read
15 about this in all the international papers this morning on my
16 way in, is the only way I learned about this. But we're
17 willing to have monitoring, strict pretrial conditions.

18 There's another argument that wasn't made by the
19 government, that he was collecting huge sums of money for this
20 alleged organization, that he was pounding the streets. It
21 seems that they cherrypicked three incidents, which probably
22 are completely unrelated, to try and paint a picture of someone
23 who's an enforcer when we adamantly deny those allegations.

24 THE COURT: Let me just ask about the relationship.
25 Am I correct in understanding that all three of the incidents

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1 occurred inside the poker house?

2 MR. ADAMS: That is correct.

3 MR. OKSENHENDLER: That may be the common thread, but
4 the motivation for each of those incidents isn't apparent, and
5 it isn't apparent that they're related.

6 With regard to the first one, we deny it. And with
7 regard to the government's characterizations of the second two
8 incidents, we disagree with their characterizations.

9 But getting back to risk of flight: My client has a
10 Georgia passport, which was seized at the time of his arrest.
11 So, without that passport, he would not be able to exit the
12 United States.

13 He has respect for this Court and for the rule of law.
14 We've discussed that. He said he would never, ever run. He
15 has no history of any ties or contacts with the criminal
16 justice system, and he has no history of running afoul of any
17 court orders.

18 He has never been in violation, from what I have been
19 able to learn, of any drug testing rules within the boxing
20 world. There's no allegation here that he was abusing drugs,
21 and he's never used drugs, he doesn't drink alcohol. And I
22 believe he took a drug test. I would bet my bottom dollar it
23 comes up negative.

24 He's a peaceful man, he's a warrior in the ring. He's
25 a well-known entity in his community and in the larger boxing

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1 world. People tend to gravitate toward him because of his
2 world-renowned skills as a fighter.

3 THE COURT: Let's talk about timing for a moment.

4 You said you were going to be talking to people next
5 week about bonds or signing?

6 MR. OKSENHENDLER: Yes. There were -- all four or
7 five people that were here last night wanted to help. One
8 woman, who's a dear friend of his, expressed her dismay at
9 perhaps not being able to help because she's not working right
10 now, she just had her second child, but there are people that
11 really care about him. Although his family is in Georgia, his
12 second family is here in the United States. His trainer is
13 here, his promotion team is here, his manager is here, and he
14 has an awful lot of friends here. And sometimes family is
15 where you find it. He's doing what he has to do here, so that
16 he can take care of his family.

17 THE COURT: All right.

18 Are there any other facts that I should be aware of on
19 either side as opposed to just argument?

20 MR. OKSENHENDLER: No, your Honor.

21 MR. ADAMS: Well, since Mr. Oksenhendler mentioned
22 that there are things that I said yesterday that I didn't say
23 today, let me make sure that I say everything that I said
24 yesterday, although I think that the main gist of the
25 dangerousness argument lies in the assaults we've talked about

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1 already.

2 Mr. Khurtsidze was accused by an ex-girlfriend of a
3 domestic violence incident in March of this year in which her
4 hand was broken. The NYPD had lodged an i-card on that. There
5 is no charge or conviction. But I said it yesterday, I'm
6 saying it again today.

7 And with respect to the casino scheme, that was
8 certainly something that we talked about earlier. Yes, he was
9 involved in -- basically at Shulaya's direction, whenever
10 Shulaya asked for it, to come and provide the muscle to move
11 around these sample slot machines.

12 THE COURT: All right.

13 MR. OKSENHENDLER: Can I just add one fact?

14 THE COURT: Yes.

15 MR. OKSENHENDLER: With regard to this DV incident, I
16 think it's much ado about nothing. My client has been in the
17 United States for much of the period since that incident
18 allegedly happened. The NYPD clearly would have been able to
19 find him if they wanted to, and they've taken no action. An
20 i-card is a warrant without a warrant. It just allows -- I'm
21 sure you're familiar with it. It just allows the police to say
22 we're interested in talking to you, and we're going to arrest
23 you, but because we don't have a warrant, we don't have to tell
24 you that you have the right to remain silent.

25 THE COURT: All right. In any event, I thank you both

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1 for the factual information that's been provided to the Court.
2 I don't need to rely on the alleged domestic violence incident
3 to arrive at the following determination:

4 I am going to reverse Judge Gorenstein's bail
5 determination. I find that it is actually not a difficult
6 decision at all, based upon the current record. I think that
7 there is certainly, in the Court's view, under 3142 and the
8 factors under 3142, a very clear case of a danger to the
9 community here. We've got an individual where there is both
10 testimony, and we've got two videotapes, and one of them has
11 audio of him actually committing violence in the central
12 location where this enterprise had its main operations.

13 I find it very important, and to my view as to the
14 context of those assaults, that it occurred there, and that the
15 defendant has been indicted for offenses relating to his work
16 on behalf of the enterprise that was operating out of those
17 premises. Therefore, I think it is not really a difficult step
18 at all for the Court to find that the assault, number one,
19 where he was present, was an assault that was at the very least
20 known to him, and that was known to have occurred there. And
21 there is, of course, then the second assault, where we don't
22 know all of the facts and circumstances; we do know, at least
23 based upon the government's proffer, it does not appear there
24 is any self-defense involved. And as for the third assault, we
25 know, quite clearly, what happened there because of the

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1 audiotape, and that is a very disturbing event that, of course,
2 I think properly colors the Court's view as to the defendant's
3 position with regard to the others.

4 In addition, we also have audiotapes of the defendant
5 acting at least as a verbal enforcer. I think that it is a
6 very fair inference to draw that the type of conversation of
7 "you will have problems" coming from an individual associated,
8 at the very least, with this kind of enterprise, which enforces
9 its rules and its requirements through violence or through the
10 threats of violence, that those statements carry a lot of
11 weight. And, therefore, the fact that we have one audiotape --
12 the government proffers it has one audiotape -- of a threat is
13 highly significant to the Court, and that there are going to be
14 two other instances at least where there will be evidence to
15 show that this was not an isolated occurrence, that is highly
16 significant to the Court as well.

17 So, based upon the Court's view as to the defendant's
18 role, it does appear to the Court that, while he may have
19 played a number of roles in this scheme, it is quite clear to
20 me that there were assaults involved, and we are talking about
21 assaults not involved in a crime that was otherwise a
22 nonviolent crime, but in a very extensive, sweeping, as
23 charged, enterprise. So, the risk of a danger to the
24 community, in that kind of situation, is very significant
25 indeed.

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1 So, I have actually no problem finding that, as a
2 factual matter, the government has carried its burden of
3 showing by clear and convincing evidence that the defendant
4 poses a danger to the community.

5 What I would suggest is this: We'll talk about risk
6 of flight in a moment, but on the violence, once
7 Mr. Oksenhendler has an opportunity to review the videos and to
8 review the audiotapes himself -- I understand they're in a
9 foreign language, but tone of voice, kind of conversation that
10 may be occurring, things like that -- if those have you
11 believe, in your view, that they change the analysis the Court
12 should apply to this situation, you should bring that back to
13 me, and I would certainly look at the videos myself.

14 MR. OKSENHENDLER: Yes, your Honor.

15 THE COURT: I will tell you that the third video
16 alone, in my view, probably would have been sufficient for me
17 to have detained the defendant, had I been hearing this
18 application in the initial instance. To have that kind of
19 standing up, and punching, and with an audiotape, a clear
20 enforcement of this kind of violent enterprise, that is
21 extremely troubling to me. However, I have not seen the
22 videos. I'm just suggesting that if all we have was that one,
23 that would have been sufficient for the Court, under these
24 circumstances, given the nature of the case.

25 In terms of risk of flight, I also find that there is,

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1 frankly, in my view, clear and convincing evidence of risk of
2 flight. I think we only need to get to a preponderance, but I
3 think it's quite clear and convincing. With somebody who is
4 accused of a serious crime where there is audio surveillance,
5 video surveillance, firsthand observation testimony, the
6 strength of the evidence is quite clear. The motivation to
7 flee is very high. Indeed, the motivation to flee when your
8 career is a time-bound career makes it all the more urgent to
9 flee. And what I mean by that is if you are any kind of
10 athlete, the longer you are out of play, so to speak, the more
11 difficult it is.

12 So, the motivation to flee is very high, the impact on
13 the career is very significant, and the need to travel for that
14 career provides an additional motivation. Also, the defendant
15 is potentially facing, if the government is able to carry its
16 burden of proof, a lengthy period of incarceration, which also
17 carries a motivation for flight.

18 In addition to that, there are no real ties to the
19 community in a familial sense, although I accept that
20 Mr. Oksenhendler has indicated that there may be individuals
21 who function as a second family. If, again, there is a
22 sufficient factual predicate to sort of bring evidence forward
23 in that regard, that the defendant really has some down ties in
24 this country in terms of second family, that would be of
25 significance to the Court's reevaluation of its determination

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1 as to risk of flight.

2 However, he doesn't have a fixed address. He'd be
3 living in a hotel. He travels overseas with frequency and for
4 extended periods of time. He has significant foreign ties.
5 His whole family is over there. He's only here on a visa and
6 not a green card, and he has ample means to finance a flight.

7 In addition to that, he also has, conceivably, ways in
8 which he could access the means for flight, meaning the
9 appropriate identification documentation, despite the fact that
10 he's had to relinquish his passport. I note that the Court did
11 hear a lengthy description of the government's case earlier
12 this afternoon, which described at length the amount of
13 equipment that was involved in false identification, false IDs.
14 The idea that he would be able to get the necessary
15 identification documentation together to fly to one location,
16 to fly to another location, or to fly to another location
17 directly is certainly something that is well within the realm
18 of possibility.

19 The Court then turns, having found risk of flight by
20 preponderance of the evidence, but here by clear and
21 convincing, since I found clear and convincing -- I have no
22 trouble finding clear and convincing -- that there are no
23 conditions, or set of conditions, or combination of conditions
24 which could guarantee or reasonably assure -- not guarantee,
25 strike that word -- but reasonably assure the appearance of the

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1 defendant. I say that because there, again, is no home or
2 assets to restrain here in the United States of any
3 significance. The assets that would be restrained would be
4 overseas. There's no real place that I'm aware of at this
5 point in time that would be an appropriate place for additional
6 surveillance, and, as we all know, things like ankle monitors
7 can be cut off, and if you've got the means to flee, then
8 that -- as I suggested I think the defendant has -- a home
9 monitoring, in and of itself, strict pretrial supervision,
10 doesn't do it.

11 So, I find that there is both a sufficient showing of
12 a risk of flight and a lack of conditions which would
13 reasonably assure the appearance of the defendant, as well as a
14 danger to the community.

15 As a result, I reverse the bail determination of
16 Magistrate Judge Gorenstein.

17 I also note, however, that as the government said it
18 did provide additional evidence today, while it didn't rely on
19 certain arguments, it brought forward additional material upon
20 which the Court is relying. And I also had the benefit of a
21 very lengthy, almost a 45-minute, recitation of the government
22 evidence in this case and the nature of the enterprise overall.
23 So, I believe that the presentation made to me was an extremely
24 full presentation, which described the nature of this
25 enterprise and all of the evidence in connection with the

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1 discovery presentation that will be presented to prove up the
2 government's case.

3 So, the government can and is entitled to rely upon a
4 factual proffer. It has done so here. The Court does not have
5 the benefit of having evaluated the evidence here. And I do,
6 as always, invite additional development of the factual record.
7 If Mr. Oksenhendler would like to present me with materials, I
8 will make a bail application a priority, and you can bring it
9 to me, and I'll hear yet a renewal. You can make another one
10 next week, and I will hear it. But at this time, I do revoke
11 the terms of bail that have been set. The defendant will be,
12 and remain, remanded to the custody of the United States
13 Marshals unless and until that determination is changed.

14 I've signed the order of remand -- the bail
15 revocation, I should say, not remand. He's already currently
16 in custody.

17 Is there anything else we should do today?

18 One more thing. I'm not going to put out a written
19 factual determination of this. Under the rules, it is
20 sufficient that the transcript of this proceeding constitute
21 the findings of fact of this Court, and the transcript of this
22 proceeding shall constitute the findings of fact of this Court,
23 so I'm not planning on putting out a separate written decision.

24 Therefore, counsel on any appeal can rely upon the
25 transcript, and if you plan on appealing, Mr. Oksenhendler, you

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1 can apply to get a copy of the transcript, and I would
2 certainly sign for that, since you're CJA. I would note that,
3 given the defendant's assets, there is a significant question
4 as to whether he meets the qualifications for being CJA, having
5 counsel appointed for him, and it may be that that needs to be
6 revisited. However, in connection with his bail application,
7 we should not dillydally on that or let that hold us up. I'm
8 certainly willing to sign CJA vouchers for purposes of a
9 renewed bail application in the short-term. I'm just
10 suggesting that the CJA position of counsel should be
11 reevaluated in the longer term.

12 Thanks, folks. We're adjourned.

13 * * *